



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 17, 2004

Ms. Meredith Ladd
Brown & Hofmeister, LLP
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2004-10707

Dear Ms. Ladd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 217519.

The Town of Flower Mound (the "town"), which you represent, received a request for information regarding a specific citation, including the name and address of the person that filed the complaint. You state that you have provided the requestor with a portion of the requested information. You claim, however, that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. The informer's privilege, incorporated into the Public Information Act (the "Act") by section 552.101, has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing

Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). In addition, the informer's privilege protects the content of the communication only to the extent that it identifies the informant. *Roviaro*, 353 U.S. at 60.

You explain the submitted documents relate to complaints of dog-barking. You state that the complaints were made to the town's Animal Services Department, which has the responsibility for enforcing a town ordinance on dog-barking. You further explain that violations of this ordinance may carry penalties of up to \$2,000. Based on your representations and our review, we agree that the information you have marked within the submitted documents that identifies the complainants is protected by section 552.101 and the informer's privilege.

We also note that e-mail addresses that are contained within the submitted information are excepted from disclosure pursuant to section 552.137 of the Government Code. Section 552.137 provides:

- (a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.
- (c) Subsection (a) does not apply to an e-mail address:
 - (1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;
 - (2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;
 - (3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or
 - (4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Section 552.137 requires a governmental body to withhold certain email addresses of members of the public that are provided for the purpose of communicating electronically with the governmental body, unless the members of the public with whom the e-mail addresses are associated have affirmatively consented to their release. Section 552.137 does not apply to a government employee's work e-mail address or a business's general e-mail address or web address. E-mail addresses that are encompassed by subsection 552.137(c) are also not excepted from disclosure under section 552.137. Based on our review of the submitted information, we have marked the e-mail addresses that are excepted from disclosure under section 552.137(a). Unless the town has received affirmative consent for the release of these marked e-mail addresses, we conclude that it must withhold the addresses pursuant to section 552.137(a) of the Government Code.

In summary, the town may withhold the information it has marked pursuant to section 552.101 of the Government Code in conjunction with the informer's privilege. Unless the town has received affirmative consent for the release of the marked e-mail addresses, it must withhold the addresses pursuant to section 552.137(a) of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/jev

Ref: ID# 217519

Enc. Submitted documents

c: Mr. Hudson Floyd
2520 Russwood Drive
Flower Mound, Texas 75028
(w/o enclosures)